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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,959	01/30/2002	Donald L. Brodigan	20366-058010	3909

20350 7590 10/22/2003

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EXAMINER

DESIR, JEAN WICEL

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/062,959

Applicant(s)

BRODIGAN, DONALD L.

Examiner

Jean W. Désir

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-18, 20, 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Nulty (US 5,982,412).

Claim 1:

Nulty discloses:

a host terminal (item 105 of Figs. 1, 2) coupled to the user drop (items 116, 109 of Fig. 1) via the communication network (items 121, 120 of Fig. 1), wherein the host terminal is operable to: provide a test signal to the user drop - and authorize access to the signal (col. 8 lines 10-14, col. 9 lines 3-42); wherein authorizing access to the test

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signal is based at least in part upon receiving a network sign-on identifier via the user drop (col. 7 lines 33-35).

Claims 2-4 are disclosed, see ABSTRACT last two lines, Fig. 1 items 125, 122, 101.

Claim 5 is disclosed, see col. 7 lines 33-35.

Claim 6:

Nulty discloses:

coupling a test device (item 116 of Fig. 1) to the user drop (item 109 of Fig. 1), wherein the test device comprises a sign-on identifier that identifies the test device (col. 7 lines 33-35); receiving a test signal at the test device (col. 8 lines 10-14, col. 9 lines 3-42), wherein the test signal is received at least in part based on the sign-on identifier (col. 7 lines 33-35); and measuring the test signal to determine the performance capability of the user drop (col. 8 lines 38-41).

Claim 7 is rejected for the same reasons as claim 1.

Claims 8-11 are disclosed, see ABSTRACT last two lines, Fig. 1 items 125, 122, 101, col. 9 lines 15-42.

Claim 12 is rejected for the same reasons as claim 6.

Claim 13 is disclosed, see Fig. 1 item 125, 122, col. 8 lines 38-41).

Claim 14 is disclosed, see Fig. 1 items 115, 118.

Claims 15, 16 are disclosed, see col. 7 lines 33-35, col. 8 lines 10-14, col. 9 lines 15-42.

Claim 17 is disclosed, see Fig. 1 items 125, 122, 101, the ABSTRACT last two lines.

Claim 18 is disclosed, see col. 8 lines 38-41.

Claim 20:

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Nulty discloses:

a test device (Fig. 1 items 105, 116, 109); wherein the test device comprises a user drop (Fig. 1 items 116, 109), at least one input/output port, and is configured to test the performance capability of the user drop (Fig. 1 items 116, 109, col. 8 lines 38-41); wherein the user drop port is configured for receiving information via the user drop – and wherein the input/output port is configured to provide access to the test device via an external input/output device (col. 9 lines 43-52).

Claim 21 is disclosed, see Fig. 2 item 116, col. 7 lines 33-35.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 12-14, 17-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al (US 5,835,565).

Claim 12:

Smith discloses:

coupling a test device (item 100 of Fig. 1) to the user drop (item 102, of Fig. 1, which constitutes the user drop); receiving a signal at the test device via the user drop,

wherein the signal comprises a first signal type and a second signal type – and measuring the signal to determine the performance capability of the user drop (col. 2 lines 33-59).

Claim 13 is disclosed, see col. 11 lines 29-31.

Claim 14 is disclosed, see col. 10 lines 46-47.

Claims 17, 18 are disclosed, see col. 2 lines 50-59.

Claim 19 is disclosed, see col. 11 lines 12-14, 29-31.

Claim 20:

Smith discloses:

a test device (Fig. 1 items 100, 102); wherein the test device comprises a user drop (Fig. 1 item 102), at least one input/output port, and is configured to test the performance capability of the user drop (col. 2 lines 50-59); wherein the user drop port is configured for receiving information via the user drop – and wherein the input/output port is configured to provide access to the test device via an external input/output device (col. 2 lines 33-59).

Claim 21 is disclosed, see Fig. 2.

Claims 22, 23 are disclosed, see col. 11 lines 22-31, col. 10 lines 46-47, Fig. 1 item 116.

Claim 24 is disclosed, see col. 11 lines 5-31, col. 5 lines 25-35.

Claims 25, 26 are disclosed, see Fig. 1 item 116.

Response to Arguments

5. Applicant submits a terminal disclaimer, filed on 8/5/03, to obviate the double patenting rejection. The terminal disclaimer has been reviewed and it is accepted by the Office.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ***Jean W. Désir*** whose telephone number is **(703) 308-9571**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ***John W. Miller***, can be reached at **(703) 305-4795**.

7. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:


(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

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8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

JWD
Oct. 19, 03


MICHAEL H. LEE
PRIMARY EXAMINER